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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/747,812	12/29/2003	Gerald A. Hutchinson	APTLTD.043A	1883
20995 7590 07/11/2008 KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614				
EXAMINER WEEKS, GLORIA R				
ART UNIT 3721		PAPER NUMBER		
NOTIFICATION DATE 07/11/2008		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jcartee@kmob.com
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Office Action Summary

Application No.

10/747,812

Applicant(s)

HUTCHINSON ET AL.

Examiner

GLORIA R. WEEKS

Art Unit

3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 April 2008.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 6-10, 14-24 and 26-36 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-3, 6-10, 14-24 and 26-36 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

1. This action is in response to the amendment and remarks received on April 4, 2008.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 6-13, 18-22, 26-31, 35 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Katou et al. (USPN 6,214,282) in view of Weiler (USPN 4,671,763, Pasternicki (USPN 4, 675,070) and Peronek et al. (USPN 6, 698,160).

In reference to claims 1 and 7-13, 19-22, 26, 28-31, 35 and 36, Katou et al. discloses a process and apparatus for manufacturing a pouch¹ comprising: grasping a neck portion of a perform with a positive transfer/handling system (figures 13B-13f) and maintaining control of the neck portion with the positive transfer system during blow molding (figures 13B-13c) the perform into a pouch, filling the pouch with a product (figure 13d), closing the filled pouch (figure 13e) and releasing the filled and sealed pouch from the system for use by a consumer. Katou et al. does not disclose the rate at which the above disclosed process is performed. It would have been obvious to one having ordinary skill in the art at the time of the invention to produce 50,000 pouches per hour in a continuous processing line by providing multiple

¹ sealed plastic or foil container (American Heritage Dictionary)

production stations within the processing line, since it has been held that mere duplication of essential working parts of a device involves only routine skill in the art.

Katou et al. does not disclose the wall thickness of the pouch. Weiler teaches a process of blow molding a preform into a pouch, wherein the preform is made from a layer of polypropylene having a thickness of .010 inches. (column 10 lines 45-50). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the method of Katou et al. to include a polypropylene perform having a wall thickness of .010 inches, since column 10 lines 51-57 provides a uniform compression of the perform during shaping of the perform.

Katou et al. does not disclose placing the filled pouch into a rigid container while maintaining control of the neck portion with the positive transfer system. Pasternicki teaches a method of placing a pouch in a rigid container 47 while maintaining control of a neck portion 10 of the pouch 11 with a positive transfer system 6. It would have been obvious to one having ordinary skill in the art at the time of the invention to further modify the process of Katou et al. to include the step of placing the pouch into a rigid container while maintaining control of the neck portion of the pouch, since 1 lines 20-24 of Pasternicki states that such a modification provides eternal stabilization of the pouch for the purpose of allowing the pouch to stand upright on a surface without further assistance.

Neither Katou et al. nor Pasternicki discloses capping the filled pouch. Peronek et al. teaches a method of capping a filled pouch while maintaining control of the neck portion of the pouch. It would have been obvious to one having ordinary skill in the art at the time of the invention to further modify the method of Katou et al. to include the step of capping the filled pouch under positive neck control, since caps are known removable closures that allow

accessibility to a pouch contents while allowing resealing of the pouch for protection of the contents. Column 1 lines 55-57 of Peronek et al. states that positive neck control of the pouch during capping provides essential support to the container during processing.

Regarding claims 6, 18 and 27, while Katou et al. in view of Pasternicki discloses placing the pouch into a rigid container; the rigid container in which the pouch is placed has a tubular shape with a flat base, rather than a box shape. Examiner finds that both the tubular container and the box container would provide equal support to the pouch for Applicants disclosed advantage (paragraph 36 or specification) of providing external support to the pouch.

4. Claims 2, 3, 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Katou et al. (USPN 6,214,282) in view of Weiler (USPN 4,671,763, Pasternicki (USPN 4, 675,070) and Peronek et al. (USPN 6, 698,160) as applied to claim 1 above, and further in view of Wakabayashi (USPN 3,818,785).

Regarding claims 2, 3, 23 and 24, the modified process of Katou et al. does not disclose decorating and/or dressing the flexible containers. Wakabayashi teaches a process of manufacturing flexible containers including the steps of: blow molding (A) a preform into a flexible container; filling (I; column 2 lines 61-62) the flexible container with a desired product; and decorating (K) the flexible container after the container has been filled. It would have been obvious to one having ordinary skill in the art to further modify the process of Katou et al. to include the step of decorating flexible containers, as suggested by Wakabayshi, for the purpose of disclosing information regarding the contents of the flexible container.

5. Claims 10, 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over McCullough et al. (USPN 5,049,349) in view of Katou et al. (USPN 6,214,282) in view of Weiler (USPN 4,671,763 and McCullough et al. (USPN 5,049,349).

Katou et al. discloses an apparatus for manufacturing a pouch² comprising: grasping a neck portion of a perform with a positive handling system 63 (figures 13B-13f) and maintaining control of the neck portion with the positive transfer system during blow molding (figures 13B-13c) of the perform into a pouch in a manufacturing system; a filling system 36 for filling the pouch with a product (figure 13d), a closing machine 25 for closing the filled pouch (figure 13e) and releasing the filled and sealed pouch from the system for use by a consumer.

Katou et al. does not disclose the wall thickness of the pouch. Weiler teaches a system of blow molding a preform into a pouch, wherein the preform is made from a layer of polypropylene having a thickness of .010 inches. (column 10 lines 45-50). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the method of Katou et al. to include a polypropylene perform having a wall thickness of .010 inches, since column 10 lines 51-57 provides a uniform compression of the perform during shaping of the perform.

Katou et al. does not disclose a system that places the filled pouch into a rigid container before the pouch is filled. McCullough et al. teaches an apparatus for manufacturing flexible pouches, including a packaging system adapted to place the flexible pouch into a rigid box before filling the pouch. It would have been obvious to one having ordinary skill in the art at the time of the invention to further modify the apparatus of Katou et al. to include the step of placing the pouch into a rigid box while maintaining control of the neck portion of the pouch, since 2 lines 36-42 of McCullough et al. suggests that such a modification provides an inexpensive and reliable means of securing the pouch to a rigid container.

² sealed plastic or foil container (American Heritage Dictionary)

Regarding claims 6, 18 and 27, while Katou et al. in view of Pasternicki discloses placing the pouch into a rigid container; the rigid container in which the pouch is placed has a tubular shape with a flat base, rather than a box shape. Examiner finds that both the tubular container and the box container would provide equal support to the pouch for Applicants disclosed advantage (paragraph 36 or specification) of providing external support to the pouch.

6. Claims 31-33 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yoneyama et al. (US 2003/0059130) in view of Katou et al. (USPN 6,214,282) and Weiler (USPN 4,671,763).

In reference to claims 31-33 and 35, Yoneyama et al. discloses a process comprising: blow molding (paragraph 4) a multi-layered perform (paragraph 24) into a flexible pouch 2; filling the flexible pouch and placing the pouch in a rigid container (paragraph 23), such that the flexible pouch relies on collapsibility for drainage. Yoneyama et al. does not disclose maintaining positive control of the preform from which the pouch is formed throughout the disclosed process. Katou et al. teaches a process and apparatus for manufacturing a pouch³ comprising: grasping a neck portion of a perform with a positive transfer/handling system (figures 13B-13f) and maintaining control of the neck portion with the positive transfer system during blow molding (figures 13B-13c) the perform into a pouch, filling the pouch with a product (figure 13d), closing the filled pouch (figure 13e) and releasing the filled and sealed pouch from the system for use by a consumer. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the process of Yoneyama et al. such that positive control of the neck portion of the preform is maintained since the neck portion

³ sealed plastic or foil container (American Heritage Dictionary)

is the portion of the preform whose size does not change or adjust during the process of molding, filling and sealing of the preform.

Yoneyama et al. further does not disclose the rate at which the above disclosed process is performed. It would have been obvious to one having ordinary skill in the art at the time of the invention to produce 50,000 pouches per hour in a continuous processing line by providing multiple production stations within the processing line, since it has been held that mere duplication of essential working parts of a device involves only routine skill in the art.

Yoneyama et al. also does not disclose the wall thickness of the pouch. Weiler teaches a process of blow molding a preform into a pouch, wherein the preform is made from a layer of polypropylene having a thickness of .010 inches. (column 10 lines 45-50). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the method of Katou et al. to include a polypropylene perform having a wall thickness of .010 inches, since column 10 lines 51-57 provides a uniform compression of the perform during shaping of the perform.

7. Claims 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yoneyama et al. (US 2003/0059130) in view of Katou et al. (USPN 6,214,282) and Weiler (USPN 4,671,763) as applied to claim 31 above, and further in view of Yorn et al. (USPN 6,827,237).

Regarding claim 34, Yoneyama et al. discloses a method of producing a flexible pouch, including placing the flexible pouch within a rigid container. Yoneyama et al. does not disclose providing the flexible pouch with an outer layer of foam. It would have been obvious to one having ordinary skill in the art at the time of the invention to provide the flexible pouch with an outer layer of foam, since column 3 lines 59-67 states an outer layer of foam can assist the removal of contents from within the flexible pouch while positioned within the rigid container.

Response to Arguments

8. Applicant's arguments filed April 4, 2008 have been fully considered but they are not persuasive.
9. During patent examination of the claims, the pending claims must be given their broadest reasonable interpretation consistent with the specification.⁴ Moreover, while the claims of issued patents are interpreted in light of the specification, prosecution history, prior art and other claims, *this is not the mode of claim interpretation to be applied during examination*. During examination, the claims must be interpreted as broadly as their terms reasonably allow.⁵

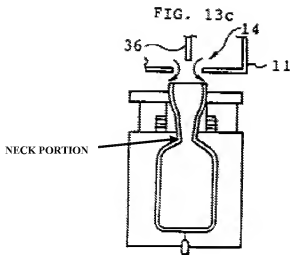
With respect to claims 1, 10 and 22 as rejected over Katou et al., Applicant has argued that Katou et al. fails to disclose a process and apparatus for manufacturing a container from a preform, rather the container formed by Katou et al. is developed from a parson. Examiner has found the structure of a parson to be equivalent to that of a preform, as supported by paragraph 11 and 23 of Applicant's specification, since the parson of Katou et al. has a neck⁶ portion (figure 8) and is capable of being blow-molded into a container (column 6 lines 51-53).

Applicant further argues that Katou et al. fails to handle the neck portion of the preform throughout the process of manufacturing and filling, per figure 13c of Katou et al. Examiner disagrees, as the neck portion of the container has been interpreted to be the non-threaded, narrowed portion of the preform and container as indicated below.

⁴ *Phillips v. AWH Corp.*, 415 F.3d 1303, 75 USPQ2d 1321 (Fed. Cir. 2005). See also MPEP § 2111.

⁵ *In re Am. Acad. of Sci. Tech. Cir.*, 367 F.3d 1359, 1369, 70 USPQ2d 1827, 1834 (Fed. Cir. 2004). See also MPEP § 2111.0

⁶ A relatively narrow elongation, projection, or connecting part. (American Heritage Dictionary)



10. With respect to the rejection of claims 1, 10 and 22 over Katou et al. in view of Weiler, Applicant has argued that secondary reference, Weiler, fails to teach the claim limitations lacking by Katou et al.; specifically the disclosure of a container having an "average" wall thickness of 0.003 to about 0.010 inches. Rather, Weiler teaches only a small portion of the container having the claimed wall thickness, wherein the average wall thickness of the container exceeds the claimed range. Column 3 lines 32-37 of Weiler teaches blow-molding a polypropylene perform into a container, wherein the wall thickness can be controlled to a desired thickness (column 4 lines 9-24).

A reference is not limited to what the patentees describe as their own invention(s) or to the problem(s) with which they are concerned; rather the reference is relevant for all it contains. Essentially, a reference may be relied upon for all that it would have reasonably suggested to one having ordinary skill in the art, including nonpreferred embodiments. The disclosed average wall thickness disclosed in column 10 lines 45-50 is cited by Weiler to be a preferred or example average wall thickness range. Since Weiler teaches blow-molding the container from the same material as Applicant's preform, as disclosed in paragraph 23 of specification, it would have been

obvious to one having ordinary skill in the art at the time the invention was made to control the wall thickness of the perform during blow-molding into the container, such that the average wall thickness is 0.003 to 0.010 inches, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art.⁷

11. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art.⁸ In this case, column 1 lines 18-21 of Katou et al. expresses a desire to manufacture and fill a blow-molded container while preventing contamination of the contents by which the container is filled, during the filling and sealing steps of the manufacturing process. Weiler teaches a solution to such a problem by providing the container that is uniform with its closure structure. Thus, Examiner finds there to be sufficient motivation to modify the process and apparatus of Katou et al. as suggested by Weiler.

12. Regarding the rejection of claims 31-33 and 35 over Yoneyama et al. in view of Weiler, Applicant has contested the qualification of Yoneyama et al. as a 35 U.S.C 103(a) reference. Examiner is hereby providing a copy of the abstract posted by WIPO, disclosing the international publication date of primary reference Yoneyama et al. to be October 11, 2001. If the publication or issue date of the reference is more than 1 year prior to the effective filing date of the application, the reference qualifies as prior art under 35 U.S.C. 102(b), and subsequently is

⁷ *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 198C).

⁸ See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

availability to be applied in a 35 U.S.C. 103(a) rejection.⁹ In this case, since the earliest filing date of Applicant's application is December 27, 2002, Yoneyama et al. is found to meet the standards of a 103(a) reference. The MPEP does not require that a publication be printed in English to meet the qualifications of a 35 U.S.C. 102 reference.

13. Applicant's arguments with respect to the rejection of amended claims 31-35 over Yoneyama et al., specifically with respect to the limitation of maintaining positive control of a neck portion of a perform, have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

⁹ (MPEP § 706.02)

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to GLORIA R. WEEKS whose telephone number is (571)272-4473. The Examiner can normally be reached on M-F 8am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Other helpful telephone numbers are listed for applicant's benefit:

- Allowed Files & Publication (888) 786-0101
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- Inventor Assistance Center (800) PTO-9199
- Petitions/special Programs (571) 272-3282
- Information Help line 1-800-786-9199

/Gloria R. Weeks/
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3721

July 10, 2008